

EXHIBIT G

Andrew Curran

From: Kaounis, Angelique [AKaounis@gibsondunn.com]
Sent: Friday, June 29, 2007 5:07 PM
To: Richard Erwine
Cc: Katherine Weall
Subject: IBM v. PSI
Attachments: Resp-Obj IBMSubpoena.pdf

Mr. Erwine,

Attached please find *Hewlett-Packard Company's Objections and Responses to IBM's May 31, 2007 Subpoena for Documents*. As we discussed yesterday, I contacted counsel for PSI to set up a meet and confer to discuss the parameters of HP's production in relation to both the PSI and IBM subpoenas. He is available on either July 5, 2007, or some time shortly after July 11, 2007 (after Ms. Weall's return). I will be in touch to confirm the timing shortly.

Please get back to me at your earliest convenience regarding our conversation of earlier today. As we discussed, I apologize for not confirming a protocol for objections and responses with Ms. Weall after service of IBM's subpoena. As I mentioned to Ms. Weall in April, and reiterated to you on the phone, I am hopeful that we will be able to work out any issues regarding the scope of the production through the meet and confer process.

Thanks very much for your courtesy in this matter.

Angelique

<<Resp-Obj IBMSubpoena.pdf>>
Angelique Kaounis
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June 29, 2007

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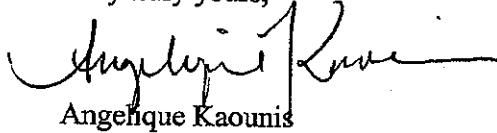
Richard W. Erwine, Esq.
Katherine Weall, Esq.
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51 Madison Ave., 22nd Floor
New York, NY 10010

Re: *IBM v. PSI*

Dear Mr. Erwine:

Enclosed please find *Hewlett-Packard Company's Objections and Responses to IBM's May 31, 2007 Subpoena for Documents*. As we discussed yesterday on the phone, I will contact counsel for PSI to set up a meet and confer conference to discuss the parameters of HP's production in relation to both the PSI and IBM subpoenas on either July 5, 2007, or some time shortly after July 11, 2007. I will be in touch to confirm the timing shortly.

Very truly yours,



Angelique Kaounis

AK/cmb

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cc: Jeffrey T. Thomas, Esq. (w/Encl.)

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11 HEWLETT-PACKARD COMPANY

8
9
10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 INTERNATIONAL BUSINESS
13 MACHINES CORPORATION,
14 Plaintiff and Counterclaim
15 Defendant,
16 v.
17 PLATFORM SOLUTIONS, INC.,
18 Defendant and
19 Counterclaimant.

Action pending in the United States
District Court for the Southern District of
New York, CASE NO. CV 06-13565 SCR

**NONPARTY HEWLETT-PACKARD
COMPANY'S OBJECTIONS AND
RESPONSES TO PLAINTIFF IBM'S
MAY 31, 2007 SUBPOENA FOR
DOCUMENTS**

19 **I. PRELIMINARY STATEMENT**

20 Pursuant to Rules 26 and 45 of the Federal Rules of Civil Procedure, Nonparty
21 Hewlett-Packard Company ("HP") hereby objects and responds to the document
22 subpoena served on or about May 31, 2007 (the "Subpoena") by Plaintiff and
23 Counterclaim Defendant International Business Machines, Inc. ("IBM" or "Plaintiff")
24 in the above-titled matter. The foregoing objections apply to each and every
25 Document Request ("Request") propounded in the Subpoena, whether or not
26 specifically referred to in the responses below.

II. GENERAL OBJECTIONS

1. HP generally objects to each Request on the ground and to the extent that it is overbroad and unduly burdensome. The sheer breadth of the Requests demonstrate that they have not been appropriately tailored to discover information that is relevant to the claims or defenses of either party, and/or reasonably calculated to lead to the discovery of admissible evidence, particularly in light of HP's nonparty status. Therefore, as a general matter, the Requests violate Federal Rule of Civil Procedure 26.

2. HP generally objects to the Subpoena in its entirety because it purports to “subject[] a person to undue burden” in violation of Rule 45(c)(3)(A)(iv) of the Federal Rules of Civil Procedure (“Rule 45”). Moreover, the subpoena is invalid on its face and violates Rule 45 (b)(1) and 45(c)(3)(A) because it fails to give adequate notice to all parties prior to service and requires inspection at a place more than 100 miles from HP’s principal place of business.

3. HP generally objects to each Request on the ground and to the extent that it seeks information that is subject to a claim of privilege or that is otherwise protected from disclosure by, including without limitation, the attorney-client privilege, the attorney work product doctrine (including but not limited to as understood in the context of Federal Rules of Civil Procedure 26 and 45), or is protected from disclosure by any other privilege, whether conferred by contract or law, and HP hereby asserts such privileges. Therefore, HP will produce only those documents that are not subject to any recognized privilege or protection, and hereby defines the term "non-privileged" to refer to those documents that are not subject to any recognized privilege or protection, including but not limited to the attorney-client privilege and attorney work product doctrine. Inadvertent disclosure of any document which is privileged or otherwise immune from discovery shall not constitute a waiver of any privilege or of any other grounds for objecting to the discovery with respect to such document or the

1 subject matter thereof, or the right of HP to object to the use of any such document or
 2 the subject matter thereof during subsequent proceedings.

3 4. HP generally objects to each Request on the ground and to the extent that
 4 it seeks divulgance of trade secret, or other confidential proprietary research,
 5 development, or commercial information whether protected by contract or by law,
 6 including but not limited to Rules 26 and 45 of the Federal Rules of Civil Procedure,
 7 California Civil Section 3426 *et seq.*, and/or the Uniform Trade Secrets Act, and that
 8 is not adequately protected by any Protective Order. *See Fed. Rs. Civ. Proc. 26(c) &*
 9 *45(c)(3)(B)*. Federal Rule of Civil Procedure 45(c)(3)(B) was intended to provide
 10 protection for the intellectual property of nonparties. *See Mattel, Inc. v. Walking*
 11 *Mountain Prods.*, 353 F.3d 792, 814 (9th Cir. 2003) (citing Rule 45 Advisory
 12 Committee Notes (1991)). To the extent that this Subpoena or any Requests therein
 13 seek divulgance of HP's confidential, proprietary and/or trade secret material, HP will
 14 not produce such information until IBM has made the required showing under Federal
 15 Rule of Civil Procedure 45(c) of a substantial need for the material that cannot
 16 otherwise be met without undue hardship. *See nSight, Inc. v. PeopleSoft, Inc.*, No.
 17 3:04 CV 3836 MMC (MEJ), 2006 U.S. Dist. LEXIS 22383, at *6 (N.D. Cal. April 13,
 18 2006). Additionally, under no circumstances will HP produce any documents in
 19 response to this subpoena unless and until an appropriate Protective Order is entered
 20 into among HP and all parties that have or will have access to any materials that may
 21 be produced by HP in this case.

22 5. HP generally objects to Plaintiff's Instructions and each Request on the
 23 ground and to the extent that they purport to impose upon it any obligations beyond
 24 those specified in the applicable Federal Rules of Civil Procedure pertaining to
 25 nonparty discovery and/or responses to subpoenas, including but not limited to Rules
 26 26 and 45 of the Federal Rules of Civil Procedure, and to the extent that they request
 27 information beyond the scope of inquiry permitted by these rules. By providing these
 28

1 Responses and Objections, HP does not agree to undertake any excessive obligations
 2 set forth in the Subpoena.

3 6. HP generally objects to the undefined term "HP" as used by IBM in
 4 Subpoena, on the grounds that it is vague, overbroad, burdensome, oppressive and
 5 seeks information that is neither relevant to the claims or defenses of either party, nor
 6 reasonably calculated to lead to the discovery of admissible evidence. This undefined
 7 term is overbroad, burdensome and oppressive in that it could potentially include
 8 every HP employee, agent or representative around the world. To require HP to
 9 potentially search its employee's files worldwide for responsive information is
 10 oppressive and harassing to HP. Consequently, as used herein, the term "HP" shall
 11 mean Hewlett Packard Co. and its relevant employees located in the HP offices in Palo
 12 Alto and San Francisco, Cal.; Marlboro, Mass.; Fort Collins, Colorado; Orlando,
 13 Florida; and Houston, Texas. HP further objects to the term "HP" as unduly
 14 burdensome and oppressive because the term, as used by the Plaintiff, could include
 15 all affiliates, divisions, and subsidiaries of HP, whose materials may not fall within the
 16 "possession, custody or control" of the company as that term is defined by Federal
 17 Rule of Civil Procedure 45 and interpreted by federal courts. Accordingly, in
 18 responding to the Requests, HP will not produce any documents outside of its
 19 "possession, custody or control" as that term is understood within the meaning of
 20 Rule 45 of the Federal Rules of Civil Procedure.

21 7. HP generally objects to the term "IBM," as defined by Plaintiff in
 22 Definition No. 4 of the Subpoena, on the grounds that it is vague, overbroad,
 23 burdensome, oppressive and seeks information that is neither relevant to the claims or
 24 defenses of either party, nor reasonably calculated to lead to the discovery of
 25 admissible evidence. Moreover, this definition is overbroad, burdensome and
 26 oppressive in that it includes any IBM affiliate and/or subsidiary around the world,
 27 and could potentially include every IBM employee, agent or representative around the
 28 world. To require HP to potentially search for any documents concerning IBM as

1 defined is oppressive and harassing to HP. Consequently, as used herein, the term
 2 IBM shall mean "International Business Machines, Inc." and its relevant employees
 3 located in the IBM offices in Armonk, N.Y.; Coppell, Tex.; Somers, N.Y.; Atlanta,
 4 Ga.; and Denver, Colo.¹

5 8. HP generally objects to the term "PSI," as defined by Plaintiff in
 6 Definition No. 5 of the Subpoena, on the grounds that it is vague, overbroad,
 7 burdensome, oppressive and seeks information that is neither relevant to the claims or
 8 defenses of either party, nor reasonably calculated to lead to the discovery of
 9 admissible evidence. Moreover, this definition is overbroad, burdensome and
 10 oppressive in that it includes any PSI affiliate and/or subsidiary around the world, and
 11 could potentially include every PSI employee, agent or representative around the
 12 world. To require HP to potentially search for any documents concerning PSI as
 13 defined is oppressive and harassing to HP. Consequently, as used herein, the term PSI
 14 shall mean "Platform Solutions, Inc." and its relevant employees located in the PSI
 15 offices in Sunnyvale, CA.

16 9. HP generally objects to the definition of the term "Proposed acquisition"
 17 as set forth in Definition No. 18 of the Subpoena, on the grounds that it erroneously
 18 refers to a "Letter of Intent" allegedly being signed by HP in October 2006.

19 10. HP generally objects to the term "PSI's System," as defined by Plaintiff
 20 in Definition No. 19 of the Subpoena, on the grounds that it is vague, overbroad,
 21 burdensome, oppressive and seeks information that is neither relevant to the claims or
 22 defenses of either party, nor reasonably calculated to lead to the discovery of
 23 admissible evidence. To require HP to potentially search for any documents
 24 concerning PSI's system as defined is oppressive and harassing to HP. Consequently,
 25

26 27 1 All references to Definitions and/or Instructions herein refer to Exhibit A of the
 28 Subpoena, and any objections to specific Definitions and/or Instructions shall
 apply to any Requests governed by such Definitions and/or Instructions.

1 as used herein, the term "PSI's System" shall mean PSI's open architecture mainframe
 2 computer, which is capable of running IBM's mainframe operating systems and other
 3 operating systems such as Linux, Unix and Microsoft Windows, that consists of plug-
 4 compatible mainframe server hardware and microcode, to the extent that PSI
 5 contemplated utilizing such technology in conjunction with HP's Integrity servers.

6 11. HP generally objects to Instruction No. 1 of the Subpoena, on the grounds
 7 that it is vague in its use of the term "other persons." HP also generally objects to this
 8 Instruction on the grounds that it is overbroad, burdensome, oppressive and seeks
 9 information that is neither relevant to the claims or defenses of either party, nor
 10 reasonably calculated to lead to the discovery of admissible evidence. HP further
 11 objects to the instruction as unduly burdensome and oppressive because it purports to
 12 impose upon HP the obligation to search outside its "possession, custody or control"
 13 as that term is defined by Federal Rule of Civil Procedure 45 and interpreted by
 14 federal courts by purporting to require HP to search the files of its "clients,
 15 prospective clients, . . . representatives, relatives, friends, . . . independent contractors,
 16 . . . [and] any other persons." Accordingly, in responding to the Requests, HP will not
 17 produce any documents outside of its "possession, custody or control" as that term is
 18 understood within the meaning of Rule 45 of the Federal Rules of Civil Procedure.

19 12. HP objects to Plaintiff's Instruction No. 2 of the Subpoena. As currently
 20 worded, Instruction No. 2 may violate Federal Rule of Civil Procedure 45 and impose
 21 an undue burden upon HP in that it may require HP to incur unreasonable expense in
 22 providing Electronically Stored Information ("ESI"). To the extent that ESI may need
 23 to be produced in the above-titled matter, HP will meet and confer with Plaintiff
 24 regarding the format of such production. However, by providing these Responses and
 25 Objections, HP does not agree to undertake any excessive obligations set forth in the
 26 Subpoena.

27 13. HP objects to Plaintiff's Instruction Nos. 3 and 4 on the ground and to the
 28 extent that they purport to prescribe a method of production that violates Federal Rule

1 of Civil Procedure 45. Rule 45(d)(1)(A) states that a “person responding to a
 2 subpoena to produce documents shall produce them as they are kept in the usual
 3 course of business *or* shall organize and label them to correspond with the categories
 4 in the demand.” (emphasis added). Rule 45(d)(1) “expressly authorizes production of
 5 documents for inspection as they are kept in the usual course of business and relieves
 6 the producing entity of the responsibility of organizing the produced documents to
 7 correspond to the categories of documents requested.” *Calvert v. Reinisch*, 218
 8 F.R.D. 497, 502 (W.D. Tex. 2003). As such, to the extent HP agrees to produce
 9 responsive materials in relation to the Subpoena, those materials shall be produced as
 10 kept in the usual course of business by HP, and HP will not undertake to organize or
 11 label the materials aside from providing each document with a Bates Number (or
 12 range) and appropriate confidentiality legend (where necessary).

13 14. HP generally objects to Instruction No. 5 of the Subpoena on the grounds
 14 and to the extent that it imposes undue burden and expense on HP in violation of
 15 Federal Rule of Civil Procedure 45 because the Instruction requires HP to provide
 16 color copies of materials without reference to payment for such copies.

17 15. HP generally objects to Instruction Nos. 7 and 9 of the Subpoena on the
 18 grounds and to the extent that they impose undue burden and expense on HP in
 19 violation of Federal Rule of Civil Procedure 45 because the Instructions purport to
 20 impose obligations on HP to provide information beyond that required by the Federal
 21 Rule of Civil Procedure 45.

22 16. HP generally objects to Instruction No. 11 of the Subpoena on the
 23 grounds that it is unduly burdensome to the extent that it interprets Federal Rule of
 24 Civil Procedure 26(e) to require HP to continually amend or update its responses to
 25 the Subpoena in any situation other than where HP might “learn[] that the response is
 26 in some material respect incomplete or incorrect and if the additional or corrective
 27 information has not otherwise been made known to the other parties during the
 28 discovery process or in writing.” Fed. R. Civ. Proc. 26(e)(2).

1 17. HP generally objects to each Request on the grounds and to the extent
 2 that it is overbroad, burdensome, and oppressive because, as set forth in Instruction
 3 No. 12, the Requests are not subject to any reasonable time limitation. For this reason,
 4 the Requests are also objectionable because they seek information that is neither
 5 relevant to the claims or defenses of any party, nor reasonably calculated to lead to the
 6 discovery of admissible evidence. Accordingly, in responding to the Requests and to
 7 the extent any documents are produced, HP will consider the relevant time period to
 8 be from January 1, 2004 to the date of the filing of the Complaint in this action.

9 18. HP generally objects to each Request on the ground and to the extent that
 10 it violates Federal Rule of Civil Procedure 26(b)(2) by seeking information already
 11 within the Defendant and Counterclaim Plaintiff PSI's ("Defendant") or Plaintiff's
 12 possession, or in the possession of individuals or entities other than nonparty HP and
 13 equally available to Plaintiff, on the grounds that: (a) such Requests are unreasonably
 14 cumulative or duplicative; (b) the information sought is obtainable from another
 15 source that is more convenient, less burdensome, or less expensive, and Plaintiff has
 16 had (or will have) ample opportunity by way of other discovery in this action to obtain
 17 the information sought; and/or (c) the burden or expense of the proposed discovery
 18 outweighs its likely benefit. Fed. R. Civ. Proc. 26(b)(2)(C); *see In re Sealed Case*
 19 (*Medical Records*), 381 F.3d 1205, 1215 (D.C. Cir. 2004) (citing the Advisory
 20 Committee Notes to Rule 26 and noting that "the last sentence of Rule 26(b)(1) was
 21 added in 2000 to emphasize the need for active judicial use of subdivision (b)(2) to
 22 control excessive discovery").

23 19. HP's responses are based upon its present knowledge, information and
 24 belief. Each response is at times subject to modification or supplementation as
 25 appropriate, which further investigation may reveal.

26 20. HP reserves its right to move to quash the Subpoena and/or make any
 27 other motion to preserve its rights, as a nonparty, from being required to produce
 28 documents in this action.

III. RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

All documents, communications, and things concerning PSI, including without limitation all documents, communications, and things related to: the proposed acquisition of PSI by H-P; any meetings or discussions between you and PSI; any agreements between you and PSI (including without limitation indemnification agreements); negotiations regarding agreements; proposals; contracts; licenses; minutes; presentations; reports; invoices; billing information; results; analyses; correspondence; projections, forecasts, or estimates of PSI's future profits and/or sales by units and revenues; projections, forecasts, or estimates of your return on your investment in PSI; and PSI's System, the Liberty Server, and/or the Open Mainframe.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

HP hereby refers to and incorporates by reference all of its General Objections above as though fully set forth herein. HP further objects to this Request on the grounds that it is overbroad and burdensome in that it seeks information that is neither relevant to the claims or defenses of either party, nor reasonably calculated to lead to the discovery of admissible evidence. HP further objects to this Request to the extent that it seeks proprietary and confidential information regarding HP's business agreements, forecasts, revenues, projections, estimates and/or analyses of its return on any investments, among other things. HP also objects to this Request on the ground that it violates Federal Rule of Civil Procedure 26(b)(2) by seeking information already within the Plaintiff's or Defendant's possession, or in the possession of individuals or entities other than Nonparty HP and equally available to Plaintiff, and thus is obtainable from another source that is more convenient, less burdensome, or less expensive. HP also objects to this Request on the ground that it calls for the production of materials that may be protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, and once an appropriate Protective Order has been entered by the Court, HP will produce

1 non-privileged documents that refer or relate to: (1) the proposed acquisition of PSI by
 2 HP; (2) PSI's System (as defined by HP above); or (3) meetings or discussions
 3 between HP and PSI regarding (1) and (2) herein, to the extent the documents also
 4 relate to IBM, and to the extent IBM demonstrates that such documents are not
 5 available by way of the party-related discovery procedures set forth in the applicable
 6 Federal Rules of Civil Procedure, including but not limited to Rule 34.

7 **REQUEST FOR PRODUCTION NO. 2:**

8 All documents concerning any partnership, joint venture, distributorship, or
 9 other relationship, whether formal or informal, between you and PSI.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

11 HP hereby refers to and incorporates by reference all of its General Objections
 12 above as though fully set forth herein. HP further objects to this Request on the
 13 grounds that it is overbroad and burdensome in that it seeks information that is neither
 14 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 15 the discovery of admissible evidence. HP further objects to this Request to the extent
 16 that it seeks proprietary and confidential information regarding HP's business
 17 agreements. HP also objects to this Request on the ground that it violates Federal
 18 Rule of Civil Procedure 26(b)(2) by seeking information already within the Plaintiff's
 19 or Defendant's possession, or in the possession of individuals or entities other than
 20 Nonparty HP and equally available to Plaintiff, and thus is obtainable from another
 21 source that is more convenient, less burdensome, or less expensive. HP also objects to
 22 this Request on the ground that it calls for the production of materials that may be
 23 protected by the attorney-client privilege and/or work product doctrine. HP further
 24 objects to this Request on the grounds that it is burdensome and oppressive in that it is
 25 unnecessarily duplicative of Request No. 1 above. Subject to and without waiving the
 26 foregoing objections, and once an appropriate Protective Order has been entered by
 27 the Court, HP will produce non-privileged documents that are sufficient to show any
 28 partnership, joint venture, or distributorship between HP and PSI, to the extent that

1 such documents also refer or relate to IBM, and to the extent IBM demonstrates that
 2 such documents are not available by way of the party-related discovery procedures set
 3 forth in the applicable Federal Rules of Civil Procedure, including but not limited to
 4 Rule 34.

5 **REQUEST FOR PRODUCTION NO. 3:**

6 All documents and things concerning the Integrity Server as it relates to PSI,
 7 PSI's System, the Liberty Server, and/or the Open Mainframe.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

9 HP hereby refers to and incorporates by reference all of its General Objections
 10 above as though fully set forth herein. HP further objects to this Request on the
 11 grounds that it is overbroad and burdensome in that it seeks information that is neither
 12 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 13 the discovery of admissible evidence. HP further objects to this Request to the extent
 14 that it seeks proprietary and confidential information regarding HP's Integrity Server
 15 technology. HP also objects to this Request on the ground that it violates Federal Rule
 16 of Civil Procedure 26(b)(2) by seeking information already within the Plaintiff's or
 17 Defendant's possession, or in the possession of individuals or entities other than
 18 Nonparty HP and equally available to Plaintiff, and thus is obtainable from another
 19 source that is more convenient, less burdensome, or less expensive. HP also objects to
 20 this Request on the ground that it calls for the production of materials that may be
 21 protected by the attorney-client privilege and/or work product doctrine. HP further
 22 objects to this Request on the grounds that it is burdensome and oppressive in that it is
 23 unnecessarily duplicative of Request No. 1 above and No. 13 below. Subject to and
 24 without waiving the foregoing objections, and once an appropriate Protective Order
 25 has been entered by the Court, HP will produce non-privileged documents concerning
 26 PSI's use of the Integrity Server to the extent such documents also relate to PSI's
 27 System (as defined by HP above).

28

REQUEST FOR PRODUCTION NO. 4:

1 All documents and things concerning communications between you and any
 2 person or entity other than PSI, including without limitation T3T, that concern or
 3 relate to PSI, PSI's System, the Liberty Server, and/or the Open Mainframe including
 4 without limitation: agreements (including indemnification agreements) between you
 5 and any person or entity other than PSI that concern PSI; documents concerning any
 6 meeting, discussion, and/or communication between you and any person or entity
 7 other than PSI; proposals; documents concerning any agreement, partnership, joint
 8 venture, distributorship, or other relationship, whether formal or informal, between
 9 you and T3T or any other person or entity relating to PSI; negotiations regarding
 10 agreements; contracts; licenses; minutes; presentations; reports; invoices; billing
 11 information; results; analyses; or correspondence.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

14 HP hereby refers to and incorporates by reference all of its General Objections
 15 above as though fully set forth herein. HP further objects to this Request on the
 16 grounds that it is overbroad and burdensome in that it seeks information that is neither
 17 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 18 the discovery of admissible evidence. HP further objects to this Request to the extent
 19 that it seeks proprietary and confidential information regarding HP's business
 20 relationships with T3T, among other non-parties to this litigation. HP also objects to
 21 this Request on the ground that it violates Federal Rule of Civil Procedure 26(b)(2) by
 22 seeking information already within the Plaintiff's or Defendant's possession, or in the
 23 possession of individuals or entities other than Nonparty HP and equally available to
 24 Plaintiff, and thus is obtainable from another source that is more convenient, less
 25 burdensome, or less expensive. HP also objects to this Request on the ground that it
 26 calls for the production of materials that may be protected by the attorney-client
 27 privilege and/or work product doctrine. HP further objects to this Request on the
 28

1 grounds that it is burdensome and oppressive in that it is unnecessarily duplicative of
 2 Request No. 1 above. HP will not provide materials in response to this Request.

3 **REQUEST FOR PRODUCTION NO. 5:**

4 All documents concerning any funding that H-P, Intel, Microsoft, or any
 5 member of the Itanium Solutions Alliance, and/or the Mainframe Migration Alliance
 6 has provided, is providing, or intends to provide to PSI and/or T3T, including but not
 7 limited to documents showing the source and amount of any such funding.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

9 HP hereby refers to and incorporates by reference all of its General Objections
 10 above as though fully set forth herein. HP further objects to this Request on the
 11 grounds that it is overbroad and burdensome in that it seeks information that is neither
 12 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 13 the discovery of admissible evidence. HP further objects to this Request to the extent
 14 that it seeks proprietary and confidential information regarding HP's business
 15 relationships with T3T, among other non-parties to this litigation. HP also objects to
 16 this Request on the ground that it violates Federal Rule of Civil Procedure 26(b)(2) by
 17 seeking information already within the Plaintiff's or Defendant's possession, or in the
 18 possession of individuals or entities other than Nonparty HP and equally available to
 19 Plaintiff, and thus is obtainable from another source that is more convenient, less
 20 burdensome, or less expensive. HP also objects to this Request on the ground that it
 21 calls for the production of materials that may be protected by the attorney-client
 22 privilege and/or work product doctrine. HP further objects to this Request on the
 23 grounds that it is burdensome and oppressive in that it is unnecessarily duplicative of
 24 Request No. 1 above. HP will not provide materials in response to this Request.

25 **REQUEST FOR PRODUCTION NO. 6:**

26 All documents relating to the actual or possible indemnification by any entity of
 27 any other entity in connection with the testing, installation, sale, or use of any PSI
 28 System, Liberty Server, Integrity Server, and/or Open Mainframe, including without

1 limitation any agreement by PSI and/or T3T to indemnify H-P and/or H-P's customers
 2 in connection with these activities.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

4 HP hereby refers to and incorporates by reference all of its General Objections
 5 above as though fully set forth herein. HP further objects to this Request on the
 6 grounds that it is overbroad and burdensome in that it seeks information that is neither
 7 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 8 the discovery of admissible evidence. HP further objects to this Request to the extent
 9 that it seeks proprietary and confidential information regarding HP's business
 10 relationships with T3T, among other non-parties to this litigation. HP also objects to
 11 this Request on the ground that it violates Federal Rule of Civil Procedure 26(b)(2) by
 12 seeking information already within the Plaintiff's or Defendant's possession, or in the
 13 possession of individuals or entities other than Nonparty HP and equally available to
 14 Plaintiff, and thus is obtainable from another source that is more convenient, less
 15 burdensome, or less expensive. HP also objects to this Request on the ground that it
 16 calls for the production of materials that may be protected by the attorney-client
 17 privilege and/or work product doctrine. HP further objects to this Request on the
 18 grounds that it is burdensome and oppressive in that it is unnecessarily duplicative of
 19 Request No. 1 above. Subject to and without waiving the foregoing objections, and
 20 once an appropriate Protective Order has been entered by the Court, HP will produce
 21 non-privileged documents that are sufficient to show any partnership, joint venture, or
 22 distributorship between HP and PSI, to the extent that such documents also refer or
 23 relate to IBM, and to the extent IBM demonstrates that such documents are not
 24 available by way of the party-related discovery procedures set forth in the applicable
 25 Federal Rules of Civil Procedure, including but not limited to Rule 34.

26 **REQUEST FOR PRODUCTION NO. 7:**

27 All documents concerning IBM patents, including without limitation: all
 28 documents concerning the Patents-in-suit and/or the subject matter described therein,

1 including but not limited to all documents concerning H-P's first knowledge of the
 2 Patents-in-suit; all documents concerning H-P's or PSI's potential or actual
 3 infringement of the Patents-in-suit, and/or PSI's potential or actual liability regarding
 4 infringement of the Patents-in-suit; all documents concerning any IBM "assurances"
 5 or "promises" to license IBM's patents to PSI; all documents concerning any IBM
 6 "assurances" or "promises" to license any IBM software to PSI or for use on PSI's
 7 System, a Liberty Server, an Integrity Server, and/or an Open Mainframe; and all
 8 documents concerning any "publicly disseminated policy of reasonable, non-
 9 discriminatory licensing" as alleged in paragraphs 8 and 68 to 75 of PSI's
 10 Counterclaims, contained in its Answer (copy attached as Exhibit F).

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

12 HP hereby refers to and incorporates by reference all of its General Objections
 13 above as though fully set forth herein. HP further objects to this Request on the
 14 grounds that it is overbroad and burdensome in that it seeks information that is neither
 15 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 16 the discovery of admissible evidence. HP also objects to this Request on the ground
 17 that it violates Federal Rule of Civil Procedure 26(b)(2) by seeking information
 18 already within the Plaintiff's or Defendant's possession, or in the possession of
 19 individuals or entities other than Nonparty HP and equally available to Plaintiff, and
 20 thus is obtainable from another source that is more convenient, less burdensome, or
 21 less expensive. HP also objects to this Request on the ground that it calls for the
 22 production of materials that may be protected by the attorney-client privilege and/or
 23 work product doctrine. Subject to and without waiving the foregoing objections, and
 24 once an appropriate Protective Order has been entered by the Court, HP will produce
 25 non-privileged documents referencing or relating to U.S. Patent No. 5,696,709, U.S.
 26 Patent No. 5,825,678, U.S. Patent No. 5,953,520, U.S. Patent No. 5,987,495, and U.S.
 27 Patent No. 6,801,993, to the extent that such documents refer or relate to PSI, and to
 28 the extent such documents exist.

1 **REQUEST FOR PRODUCTION NO. 8:**

2 All documents concerning any attempts and/or decisions to modify or redesign
 3 PSI's System in view of any claim of the Patents-in-suit.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

5 HP hereby refers to and incorporates by reference all of its General Objections
 6 above as though fully set forth herein. HP further objects to this Request on the
 7 grounds that it is overbroad and burdensome in that it seeks information that is neither
 8 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 9 the discovery of admissible evidence. HP also objects to this Request on the ground
 10 that it violates Federal Rule of Civil Procedure 26(b)(2) by seeking information
 11 already within the Plaintiff's or Defendant's possession, or in the possession of
 12 individuals or entities other than Nonparty HP and equally available to Plaintiff, and
 13 thus is obtainable from another source that is more convenient, less burdensome, or
 14 less expensive. HP also objects to this Request on the ground that it calls for the
 15 production of materials that may be protected by the attorney-client privilege and/or
 16 work product doctrine. HP further objects to this Request on the grounds that it is
 17 burdensome and oppressive in that it is unnecessarily duplicative of Request Nos. 1
 18 and 7 above. Subject to and without waiving the foregoing objections, and once an
 19 appropriate Protective Order has been entered by the Court, HP will produce non-
 20 privileged documents referencing or relating to U.S. Patent No. 5,696,709, U.S. Patent
 21 No. 5,825,678, U.S. Patent No. 5,953,520, U.S. Patent No. 5,987,495, and U.S. Patent
 22 No. 6,801,993, to the extent that such documents refer or relate to PSI, and to the
 23 extent such documents exist.

24 **REQUEST FOR PRODUCTION NO. 9:**

25 All documents concerning whether and/or how any patent license between IBM
 26 and H-P, or any other agreement between IBM and H-P, applies or relates, or might
 27 apply or relate to making, selling, offering to sell, or using PSI's System, the Liberty
 28 Server, and/or the Open Mainframe, or any component thereof, including without

1 limitation software, firmware, and/or other components that, alone or in combination,
 2 emulate, in whole or in part, IBM's S/390 and/or z/Architectures.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

4 HP hereby refers to and incorporates by reference all of its General Objections
 5 above as though fully set forth herein. HP further objects to this Request on the
 6 grounds that it is overbroad and burdensome in that it seeks information that is neither
 7 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 8 the discovery of admissible evidence. HP also objects to this Request on the grounds
 9 that it is vague and ambiguous in its use of the term "any patent license." HP also
 10 objects to this Request on the ground that it violates Federal Rule of Civil Procedure
 11 26(b)(2) by seeking information already within the Plaintiff's or Defendant's
 12 possession, or in the possession of individuals or entities other than Nonparty HP and
 13 equally available to Plaintiff, and thus is obtainable from another source that is more
 14 convenient, less burdensome, or less expensive. HP further objects to this Request on
 15 the grounds that it is burdensome and oppressive in that it is unnecessarily duplicative
 16 of Request Nos. 1, 4, 7 and 8 above. HP also objects to this Request on the ground
 17 that it calls for the production of materials that may be protected by the attorney-client
 18 privilege and/or work product doctrine. Subject to and without waiving the foregoing
 19 objections, and once an appropriate Protective Order has been entered by the Court,
 20 HP will produce non-privileged documents that refer or relate to the Patent Cross
 21 Licensing Agreement between HP and IBM that relates to U.S. Patent No. 5,696,709,
 22 U.S. Patent No. 5,825,678, U.S. Patent No. 5,953,520, U.S. Patent No. 5,987,495, and
 23 U.S. Patent No. 6,801,993 (hereinafter the "HP/IBM Patent CLA"), to the extent such
 24 documents also relate to PSI's System (as defined by HP above).

25 **REQUEST FOR PRODUCTION NO. 10:**

26 All documents that refer or relate to the "make, use or sell" exception in H-P's
 27 license grant.

1 RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

2 HP hereby refers to and incorporates by reference all of its General Objections
 3 above as though fully set forth herein. HP further objects to this Request on the
 4 grounds that it is overbroad and burdensome in that it seeks information that is neither
 5 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 6 the discovery of admissible evidence. HP also objects to this Request on the grounds
 7 that it is vague and ambiguous in its use of the undefined term "license grant." HP
 8 further objects to this Request on the grounds that it is burdensome and oppressive in
 9 that it is unnecessarily duplicative of Request Nos. 7 and 9 above. HP also objects to
 10 this Request on the ground that it calls for the production of materials that may be
 11 protected by the attorney-client privilege and/or work product doctrine. Subject to
 12 and without waiving the foregoing objections, and once an appropriate Protective
 13 Order has been entered by the Court, HP will produce non-privileged documents that
 14 refer or relate to the HP/IBM Patent CLA, to the extent such documents also relate to
 15 PSI or PSI's System (as defined by HP above).

16 REQUEST FOR PRODUCTION NO. 11:

17 All documents concerning the ability of H-P, PSI, and/or any of their customers
 18 to use or license OS/390, z/OS, or any IBM software for use in conjunction with PSI's
 19 System, the Liberty Server, and/or the Open Mainframe.

20 RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

21 HP hereby refers to and incorporates by reference all of its General Objections
 22 above as though fully set forth herein. HP further objects to this Request on the
 23 grounds that it is overbroad and burdensome in that it seeks information that is neither
 24 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 25 the discovery of admissible evidence. HP also objects to this Request on the ground
 26 that it violates Federal Rule of Civil Procedure 26(b)(2) by seeking information
 27 already within the Plaintiff's or Defendant's possession, or in the possession of
 28 individuals or entities other than Nonparty HP and equally available to Plaintiff, and

1 thus is obtainable from another source that is more convenient, less burdensome, or
 2 less expensive. HP further objects to this Request on the grounds that it is
 3 burdensome and oppressive in that it is unnecessarily duplicative of Request Nos. 1
 4 and 10 above. HP also objects to this Request on the ground that it calls for the
 5 production of materials that may be protected by the attorney-client privilege and/or
 6 work product doctrine. Subject to and without waiving the foregoing objections, and
 7 once an appropriate Protective Order has been entered by the Court, HP will produce
 8 non-privileged documents that refer or relate to HP's or PSI's ability to use IBM
 9 OS/390 and/or z/OS software in connection with PSI's System (as defined by HP
 10 above).

11 **REQUEST FOR PRODUCTION NO. 12:**

12 All documents concerning any compensation paid by PSI to H-P for any
 13 processor, product, program, device, instrumentality, software, firmware, millicode,
 14 and/or microcode designed or modified by H-P, or for or on behalf of H-P, for use in
 15 or with a PSI System, Liberty Server, and/or Open Mainframe.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

17 HP hereby refers to and incorporates by reference all of its General Objections
 18 above as though fully set forth herein. HP further objects to this Request on the
 19 grounds that it is overbroad and burdensome in that it seeks information that is neither
 20 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 21 the discovery of admissible evidence. HP also objects to this Request on the ground
 22 that it violates Federal Rule of Civil Procedure 26(b)(2) by seeking information
 23 already within the Plaintiff's or Defendant's possession, or in the possession of
 24 individuals or entities other than Nonparty HP and equally available to Plaintiff, and
 25 thus is obtainable from another source that is more convenient, less burdensome, or
 26 less expensive. HP further objects to this Request on the grounds that it is
 27 burdensome and oppressive in that it is unnecessarily duplicative of Request No. 1
 28 above. HP also objects to this Request on the ground that it calls for the production of

1 materials that may be protected by the attorney-client privilege and/or work product
 2 doctrine. Subject to and without waiving the foregoing objections, and once an
 3 appropriate Protective Order has been entered by the Court, HP will produce non-
 4 privileged documents that are sufficient to show any partnership, joint venture, or
 5 distributorship between HP and PSI, to the extent that such documents also refer or
 6 relate to IBM, and to the extent IBM demonstrates that such documents are not
 7 available by way of the party-related discovery procedures set forth in the applicable
 8 Federal Rules of Civil Procedure, including but not limited to Rule 34.

9 **REQUEST FOR PRODUCTION NO. 13:**

10 All documents relating to the use or inclusion of any H-P processor, product,
 11 program, device, instrumentality, software, firmware, millicode, and/or microcode in
 12 or with a PSI System, Liberty Server, and/or Open Mainframe.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

14 HP hereby refers to and incorporates by reference all of its General Objections
 15 above as though fully set forth herein. HP further objects to this Request on the
 16 grounds that it is overbroad and burdensome in that it seeks information that is neither
 17 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 18 the discovery of admissible evidence. HP further objects to this Request to the extent
 19 that it seeks disclosure of HP trade secrets or any other proprietary and confidential
 20 HP technology. HP also objects to this Request on the ground that it violates Federal
 21 Rule of Civil Procedure 26(b)(2) by seeking information already within the Plaintiff's
 22 or Defendant's possession, or in the possession of individuals or entities other than
 23 Nonparty HP and equally available to Plaintiff, and thus is obtainable from another
 24 source that is more convenient, less burdensome, or less expensive. HP further
 25 objects to this Request on the grounds that it is burdensome and oppressive in that it is
 26 unnecessarily duplicative of Request Nos. 1, 2, 3, and 4 above. HP also objects to this
 27 Request on the ground that it calls for the production of materials that may be
 28 protected by the attorney-client privilege and/or work product doctrine. Subject to

1 and without waiving the foregoing objections, and once an appropriate Protective
 2 Order has been entered by the Court, HP will produce non-privileged documents
 3 concerning PSI's use of the Integrity Server to the extent such documents also relate
 4 to PSI's System (as defined by HP above).

5 **REQUEST FOR PRODUCTION NO. 14:**

6 All versions, releases, levels, and/or models of any processor, product, program,
 7 device, instrumentality, software, firmware, millicode, and/or microcode designed or
 8 modified by H-P, or for or on behalf of H-P, for use in or with PSI's System, the
 9 Liberty Server, and/or the Open Mainframe.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

11 HP hereby refers to and incorporates by reference all of its General Objections
 12 above as though fully set forth herein. HP further objects to this Request on the
 13 grounds that it is overbroad and burdensome in that it seeks information that is neither
 14 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 15 the discovery of admissible evidence. HP further objects to this Request to the extent
 16 that it seeks disclosure of HP trade secrets or any other proprietary and confidential
 17 HP technology. HP also objects to this Request on the ground that it violates Federal
 18 Rule of Civil Procedure 26(b)(2) by seeking information already within the Plaintiff's
 19 or Defendant's possession, or in the possession of individuals or entities other than
 20 Nonparty HP and equally available to Plaintiff, and thus is obtainable from another
 21 source that is more convenient, less burdensome, or less expensive. HP further
 22 objects to this Request on the grounds that it is burdensome and oppressive in that it is
 23 unnecessarily duplicative of Request Nos. 1, 2, 3, 4, and 13 above. HP will not
 24 provide materials in response to this Request.

25 **REQUEST FOR PRODUCTION NO. 15:**

26 Documents sufficient to show the H-P personnel responsible for the licensing,
 27 marketing, selling, manufacturing, and/or research and development of or relating to
 28 any processor, product, program, device, instrumentality, software, firmware,

1 millicode, and/or microcode designed or modified by H-P, or for or on behalf of H-P,
 2 for use in or with PSI's System, the Liberty Server, and/or the Open Mainframe.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

4 HP hereby refers to and incorporates by reference all of its General Objections
 5 above as though fully set forth herein. HP further objects to this Request on the
 6 grounds that it is overbroad and burdensome in that it seeks information that is neither
 7 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 8 the discovery of admissible evidence. Subject to and without waiving the foregoing
 9 objections, and once an appropriate Protective Order has been entered by the Court,
 10 HP will produce non-privileged documents sufficient to show the identities of HP
 11 personnel responsible for the marketing and sale of Integrity Servers in the United
 12 States for the time period January 1, 2006 to the date of the filing of the above-titled
 13 lawsuit, to the extent that those people had an ongoing business relationship with PSI.

14 **REQUEST FOR PRODUCTION NO. 16:**

15 Documents sufficient to identify each entity that has implemented, used, tested,
 16 evaluated, licensed, purchased, leased, or otherwise acquired any PSI System, Liberty
 17 Server, Open Mainframe, or any processor, product, program, device, server,
 18 instrumentality, software, firmware, millicode, and/or microcode designed or modified
 19 by H-P, or for or on behalf of H-P, for use in or with PSI's System, the Liberty Server,
 20 and/or the Open Mainframe, including without limitation L.L. Bean, Inc., Deutsche
 21 Lufthansa AG, The Estee Lauder Companies, Cascade Natural Gas Corporation, Polk
 22 County, Iowa, and the University of Alabama Hospital at Birmingham.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

24 HP hereby refers to and incorporates by reference all of its General Objections
 25 above as though fully set forth herein. HP further objects to this Request on the
 26 grounds that it is overbroad and burdensome in that it seeks information that is neither
 27 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 28 the discovery of admissible evidence. HP further objects to this Request to the extent

1 that it seeks proprietary and confidential information regarding HP's business
 2 relationships with third parties not involved in the above-titled litigation. HP also
 3 objects to this Request on the ground that it violates Federal Rule of Civil Procedure
 4 26(b)(2) by seeking information already within the Plaintiff's or Defendant's
 5 possession, or in the possession of individuals or entities other than Nonparty HP and
 6 equally available to Plaintiff, and thus is obtainable from another source that is more
 7 convenient, less burdensome, or less expensive. HP further objects to this Request on
 8 the grounds that it is burdensome and oppressive in that it is unnecessarily duplicative
 9 of Request Nos. 1, 2, 4, and 13 above. HP will not produce documents in response to
 10 this Request.

11 **REQUEST FOR PRODUCTION NO. 17:**

12 All documents, agreements, and/or communications concerning the conception,
 13 design, research, development, testing, and/or evaluation of PSI's System or
 14 prototypes of PSI's System, including without limitation prototypes and/or projects
 15 with codenames "Vail," "Manta," "Merlin," "Gambit" and "Stingray."

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

17 HP hereby refers to and incorporates by reference all of its General Objections
 18 above as though fully set forth herein. HP further objects to this Request on the
 19 grounds that it is overbroad and burdensome in that it seeks information that is neither
 20 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 21 the discovery of admissible evidence. HP also objects to this Request on the ground
 22 that it violates Federal Rule of Civil Procedure 26(b)(2) by seeking information
 23 already within the Plaintiff's or Defendant's possession, or in the possession of
 24 individuals or entities other than Nonparty HP and equally available to Plaintiff, and
 25 thus is obtainable from another source that is more convenient, less burdensome, or
 26 less expensive. HP further objects to this Request on the grounds that it is
 27 burdensome and oppressive in that it is unnecessarily duplicative of Request Nos. 1, 2,
 28

1 3 and 4 above. HP will not provide materials in response to this Request beyond what
 2 it has agreed to produce in response to Request Nos. 1-3 above.

3 **REQUEST FOR PRODUCTION NO. 18:**

4 All documents, agreements, and/or communications concerning the conception,
 5 design, research, development, testing, and/or evaluation of any processor, product,
 6 program, device, instrumentality, software, firmware, millicode, and/or microcode
 7 designed or modified by H-P, or for or on behalf of H-P, for use in or with PSI's
 8 System, the Liberty Server, and/or the Open Mainframe.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

10 HP hereby refers to and incorporates by reference all of its General Objections
 11 above as though fully set forth herein. HP further objects to this Request on the
 12 grounds that it is overbroad and burdensome in that it seeks information that is neither
 13 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 14 the discovery of admissible evidence. HP further objects to this Request to the extent
 15 that it seeks disclosure of proprietary and confidential HP research, among other
 16 things. HP also objects to this Request on the ground that it violates Federal Rule of
 17 Civil Procedure 26(b)(2) by seeking information already within the Plaintiff's or
 18 Defendant's possession, or in the possession of individuals or entities other than
 19 Nonparty HP and equally available to Plaintiff, and thus is obtainable from another
 20 source that is more convenient, less burdensome, or less expensive. HP further
 21 objects to this Request on the grounds that it is burdensome and oppressive in that it is
 22 unnecessarily duplicative of Request Nos. 1, 2, 3, 4, 12, and 13 above. HP also
 23 objects to this Request on the ground that it calls for the production of materials that
 24 may be protected by the attorney-client privilege and/or work product doctrine. HP
 25 will not provide materials in response to this Request beyond what it has agreed to
 26 produce in response to Request Nos. 1-3 above.

27

28

REQUEST FOR PRODUCTION NO. 19:

All documents concerning competition with IBM S/390 or zSeries computers or products.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

HP hereby refers to and incorporates by reference all of its General Objections above as though fully set forth herein. HP further objects to this Request on the grounds that it is overbroad and burdensome in that it seeks information that is neither relevant to the claims or defenses of either party, nor reasonably calculated to lead to the discovery of admissible evidence. HP further objects to this Request to the extent that it seeks disclosure of proprietary and confidential HP research, among other things. HP also objects to this Request on the ground that it violates Federal Rule of Civil Procedure 26(b)(2) by seeking information already within the Plaintiff's or Defendant's possession, or in the possession of individuals or entities other than Nonparty HP and equally available to Plaintiff, and thus is obtainable from another source that is more convenient, less burdensome, or less expensive. HP further objects to this Request on the grounds that it is burdensome and oppressive in that it is unnecessarily duplicative of Request Nos. 9 and 11 above. Subject to and without waiving the foregoing objections, and once an appropriate Protective Order has been entered by the Court, HP will produce non-privileged documents concerning competition with IBM S/390 or zSeries computers or products to the extent such documents also relate to PSI.

REQUEST FOR PRODUCTION NO. 20:

All documents relating to the ability of any end user of an IBM S/390 or zSeries computer to port, migrate, rehost, or otherwise modify, move, or replace some or all of its IBM S/390 or zSeries applications, processes, and/or data to or with another computing platform, including without limitation computers capable of running the UNIX, Linux, and/or Windows operating systems.

1 RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

2 HP hereby refers to and incorporates by reference all of its General Objections
 3 above as though fully set forth herein. HP further objects to this Request on the
 4 grounds that it is overbroad and burdensome in that it seeks information that is neither
 5 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 6 the discovery of admissible evidence. HP further objects to this Request to the extent
 7 that it seeks disclosure of proprietary and confidential HP research, among other
 8 things. HP also objects to this Request on the ground that it violates Federal Rule of
 9 Civil Procedure 26(b)(2) by seeking information already within the Plaintiff's or
 10 Defendant's possession, or in the possession of individuals or entities other than
 11 Nonparty HP and equally available to Plaintiff, and thus is obtainable from another
 12 source that is more convenient, less burdensome, or less expensive. HP further
 13 objects to this Request on the grounds that it is burdensome and oppressive in that it is
 14 unnecessarily duplicative of Request Nos. 1 and 19 above. HP will not produce
 15 documents in response to this Request.

16 REQUEST FOR PRODUCTION NO. 21:

17 All documents concerning actual or potential migration or movement, in whole
 18 or in part, of any application, process or data from IBM S/390 or zSeries platforms to
 19 any other computing platform, including without limitation computers capable of
 20 running the UNIX, Linux, and/or Windows operating systems.

21 RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

22 HP hereby refers to and incorporates by reference all of its General Objections
 23 above as though fully set forth herein. HP further objects to this Request on the
 24 grounds that it is overbroad and burdensome in that it seeks information that is neither
 25 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 26 the discovery of admissible evidence. HP further objects to this Request to the extent
 27 that it seeks disclosure of proprietary and confidential HP research, among other
 28 things. HP also objects to this Request on the ground that it violates Federal Rule of

1 Civil Procedure 26(b)(2) by seeking information already within the Plaintiff's or
 2 Defendant's possession, or in the possession of individuals or entities other than
 3 Nonparty HP and equally available to Plaintiff, and thus is obtainable from another
 4 source that is more convenient, less burdensome, or less expensive. HP further
 5 objects to this Request on the grounds that it is burdensome and oppressive in that it is
 6 unnecessarily duplicative of Request Nos. 1, 19 and 20 above. HP will not produce
 7 documents in response to this Request.

8 **REQUEST FOR PRODUCTION NO. 22:**

9 All documents relating to H-P's and/or PSI's promotion, marketing, offer to sell,
 10 offer to license, and/or advertising of any PSI System, Liberty Server, and/or Open
 11 Mainframe, including without limitation: documents relating to competition or market
 12 conditions for PSI's System, the Liberty Server, and/or the Open Mainframe; and
 13 documents relating to any and all opportunities for PSI, H-P, Intel, and/or T3T to sell,
 14 license, or otherwise transfer any PSI System, Liberty Server, and/or Open Mainframe.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

16 HP hereby refers to and incorporates by reference all of its General Objections
 17 above as though fully set forth herein. HP further objects to this Request on the
 18 grounds that it is overbroad and burdensome in that it seeks information that is neither
 19 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 20 the discovery of admissible evidence. HP further objects to this Request to the extent
 21 that it seeks information regarding HP's actual or prospective business relationships
 22 with non-parties to this litigation. HP also objects to this Request on the ground that it
 23 violates Federal Rule of Civil Procedure 26(b)(2) by seeking information already
 24 within the Plaintiff's or Defendant's possession, or in the possession of individuals or
 25 entities other than Nonparty HP and equally available to Plaintiff, and thus is
 26 obtainable from another source that is more convenient, less burdensome, or less
 27 expensive. HP also objects to this Request on the ground that it calls for the
 28 production of materials that may be protected by the attorney-client privilege and/or

1 work product doctrine. HP further objects to this Request on the grounds that it is
 2 burdensome and oppressive in that it is unnecessarily duplicative of Request Nos. 1, 2,
 3 4, and 19 above. Subject to and without waiving the foregoing objections, and once
 4 an appropriate Protective Order has been entered by the Court, HP will produce non-
 5 privileged documents that concern or relate to HP's and/or PSI's promotion, marketing,
 6 offer to sell, offer to license, and/or advertising of the PSI System (as defined by HP
 7 above), in competition with, or in relation to IBM's z/OS, OS/390, z/Architecture,
 8 and/or ESA/390 products.

9 **REQUEST FOR PRODUCTION NO. 23:**

10 All documents concerning testing, analysis, reverse assembly, reverse
 11 compiling, reverse engineering, and/or translating, in whole or in part, z/OS, OS/390,
 12 z/Architecture, and/or ESA/390.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

14 HP hereby refers to and incorporates by reference all of its General Objections
 15 above as though fully set forth herein. HP further objects to this Request on the
 16 grounds that it is overbroad and burdensome in that it seeks information that is neither
 17 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 18 the discovery of admissible evidence. HP further objects to this Request to the extent
 19 that it seeks disclosure of HP trade secrets or any other proprietary and confidential
 20 HP technology or research. HP also objects to this Request on the ground that it
 21 violates Federal Rule of Civil Procedure 26(b)(2) by seeking information already
 22 within the Plaintiff's or Defendant's possession, or in the possession of individuals or
 23 entities other than Nonparty HP and equally available to Plaintiff, and thus is
 24 obtainable from another source that is more convenient, less burdensome, or less
 25 expensive. HP also objects to this Request on the ground that it calls for the
 26 production of materials that may be protected by the attorney-client privilege and/or
 27 work product doctrine. HP further objects to this Request on the grounds that it is
 28

1 burdensome and oppressive in that it is unnecessarily duplicative of Request No. 19
 2 above. HP will not produce documents in response to this Request.

3 **REQUEST FOR PRODUCTION NO. 24:**

4 Documents sufficient to identify by serial number, version, and release each
 5 copy of z/OS and/or OS/390 or any portion thereof that has been installed or executed
 6 on any PSI System, Liberty Server, and/or Open Mainframe.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

8 HP hereby refers to and incorporates by reference all of its General Objections
 9 above as though fully set forth herein. HP further objects to this Request on the
 10 grounds that it is overbroad and burdensome in that it seeks information that is neither
 11 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 12 the discovery of admissible evidence. HP also objects to this Request on the ground
 13 that it violates Federal Rule of Civil Procedure 26(b)(2) by seeking information
 14 already within the Plaintiff's or Defendant's possession, or in the possession of
 15 individuals or entities other than Nonparty HP and equally available to Plaintiff, and
 16 thus is obtainable from another source that is more convenient, less burdensome, or
 17 less expensive. HP also objects to this Request on the ground that it calls for the
 18 production of materials that may be protected by the attorney-client privilege and/or
 19 work product doctrine. HP further objects to this Request on the grounds that it is
 20 burdensome and oppressive in that it is unnecessarily duplicative of Request Nos. 1
 21 and 23 above. HP will not produce documents in response to this Request.

22 **REQUEST FOR PRODUCTION NO. 25:**

23 All documents and communications relating to plans, projections, estimates,
 24 and/or forecasts of H-P's revenues from or relating to PSI and/or T3T, including
 25 without limitation all documents, and/or communications sufficient to identify each
 26 product and/or service generating any revenue for H-P from or relating to PSI and
 27 T3T.

1 RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

2 HP hereby refers to and incorporates by reference all of its General Objections
 3 above as though fully set forth herein. HP further objects to this Request on the
 4 grounds that it is overbroad and burdensome in that it seeks information that is neither
 5 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 6 the discovery of admissible evidence. HP further objects to this Request to the extent
 7 that it seeks proprietary and confidential information regarding HP's forecasts,
 8 projections, and/or business relationship with T3T. HP also objects to this Request on
 9 the ground that it violates Federal Rule of Civil Procedure 26(b)(2) by seeking
 10 information already within the Plaintiff's or Defendant's possession, or in the
 11 possession of individuals or entities other than Nonparty HP and equally available to
 12 Plaintiff, and thus is obtainable from another source that is more convenient, less
 13 burdensome, or less expensive. HP also objects to this Request on the ground that it
 14 calls for the production of materials that may be protected by the attorney-client
 15 privilege and/or work product doctrine. HP further objects to this Request on the
 16 grounds that it is burdensome and oppressive in that it is unnecessarily duplicative of
 17 Request Nos. 1, 2, 3 and 12 above. HP will not produce documents in response to this
 18 Request.

19 REQUEST FOR PRODUCTION NO. 26:

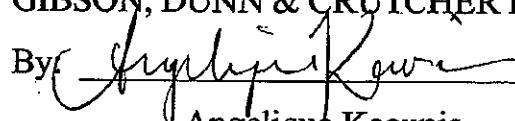
20 All documents that relate to this Action.

21 RESPONSE TO REQUEST FOR PRODUCTION NO. 26:

22 HP hereby refers to and incorporates by reference all of its General Objections
 23 above as though fully set forth herein. HP further objects to this Request on the
 24 grounds that it is overbroad and burdensome in that it seeks information that is neither
 25 relevant to the claims or defenses of either party, nor reasonably calculated to lead to
 26 the discovery of admissible evidence. HP also objects to this Request on the ground
 27 that it violates Federal Rule of Civil Procedure 26(b)(2) by seeking information
 28 already within the Plaintiff's or Defendant's possession, or in the possession of

1 individuals or entities other than Nonparty HP and equally available to Plaintiff, and
2 thus is obtainable from another source that is more convenient, less burdensome, or
3 less expensive. HP also objects to this Request on the ground that it calls for the
4 production of materials that may be protected by the attorney-client privilege and/or
5 work product doctrine. HP further objects to this Request on the grounds that it is
6 burdensome and oppressive in that it is unnecessarily duplicative of Request Nos. 1, 2,
7 3, 4, 7, 19, 20, 21, 22 and 23 above, among others. HP will not produce documents in
8 response to this Request.

9
10 DATED: June 29, 2007

11 JEFFREY T. THOMAS
12 ANGELIQUE KAOUNIS
13 GIBSON, DUNN & CRUTCHER LLP
14 By: 
15 Angelique Kaounis

16 Attorneys for Nonparty
17 HEWLETT-PACKARD COMPANY

VERIFICATION

I, Kathryn Doyel, am employed in the Corporate, Securities and M&A Section of Corporate Legal Department of Hewlett-Packard Company ("Hewlett-Packard") and I am authorized to sign this verification on behalf of HP.

The document entitled *Nonparty Hewlett-Packard Co.'s Objections and Responses to Plaintiff IBM's May 31, 2007 Subpoena for Documents* ("Response") was prepared with the assistance of employees and representatives of Hewlett-Packard. The contents of this Response are not all within my personal knowledge, and I am informed that there is no single employee of Hewlett-Packard who has personal knowledge of all the matters set forth in this Response. Subject to the limitations set forth above, I have read the Response and upon information and belief know the contents thereof. I verify under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed on June 29, 2007 at Palo Alto, California.

Kathryn Doyel
KATHRYN DOYEL

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1

CERTIFICATE OF SERVICE

2

MAIL, COMMERCIAL OVERNIGHT MESSENGER, FAX, HAND

3

DELIVERY

4 I, Claudette M. Blaylock, hereby certify as follows:

5 I am employed in the County of Los Angeles, State of California; I am over the
 6 age of eighteen years and am not a party to this action; my business address is 333
 7 South Grand Avenue, Los Angeles, California 90071, in said County and State; I am
 8 employed in the office of Angelique Kaounis, a member of the bar of this Court, and
 9 at her direction, on June 29, 2007, I served the following:

10

NONPARTY HEWLETT-PACKARD COMPANY'S OBJECTIONS

11

AND RESPONSES TO PLAINTIFF IBM'S MAY 31, 2007

12

SUBPOENA FOR DOCUMENTS

13

14 on the interested parties in this action, by:

15 **Service by Mail:** placing true and correct copy(ies) thereof in an envelope
 16 addressed to the attorney(s) of record, addressed as follows:

17

18 I am "readily familiar" with the firm's practice of collection and processing
 19 correspondence for mailing. Under that practice it would be deposited with the U.S.
 20 postal service on that same day with postage thereon fully prepaid at Los Angeles,
 21 California in the ordinary course of business.

22 **Service by Commercial Overnight Messenger:** placing true and correct
 23 copy(ies) thereof in an envelope addressed to the attorney(s) of record, addressed as
 24 follows:

25 Richard W. Erwine, Esq.
 26 Katherine Weall, Esq.
 27 Quinn Emanuel Urquhart
 28 Oliver & Hedges, LLP
 51 Madison Avenue, 22nd Floor
 New York, NY 10010
 (212) 849-7000 (tel.)

1 (212) 849-7100 (fax)
 2 [Courtesy copy by email/Pdf]

3 and after sealing said envelope I caused same to be delivered to the aforementioned
 4 attorney(s) by qualified commercial overnight messenger.

5 **Service by Fax:** causing a true copy thereof to be sent via facsimile to the
 6 attorney(s) of record at the telecopier number(s) so indicated, addressed as follows:

7 **Attorney Name & Address** **Fax and Callback Number**

8 and that the transmission was reported as completed and without error. A true and
 9 correct copy of said transmission report is attached hereto.

10 **Service by Hand Delivery:** delivering true and correct copy(ies) thereof and
 11 sufficient envelope(s) addressed to the attorney(s) of record, addressed as follows:

12 to a messenger or messengers for personal delivery.

13 I certify under penalty of perjury that the foregoing is true and correct, that the
 14 foregoing document(s), and all copies made from same, were printed on recycled
 15 paper, and that this Certificate of Service was executed by me on June 29, 2007 at Los
 16 Angeles, California.

17
 18
 19 **Claudette M. Blaylock**

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